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NO. 733

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

POLICE PENSION AND RELIEF BOARD and EDWARD O. GEER (substituted for Charles J. Lowen), JAMES T. O'DONNELL, DUANE BORDEN, TIMOTHY CROW (substituted for Harry Brofman, Harold L. Dill, and Morris A. Pade), and IVAN ELDHER AS MEMBERS THEREOF: THOMAS G. CURRIGAN (substituted for William H. McNichols) AS AUDITOR of the City and County of Denver; and the CITY AND COUNTY OF DENVER, a municipal corporation;

Petitioners,

vs.

CHARLES BEHNKE, ARTIE D. DAVIS, RAYMOND W. FELL, and FRANK G. KNAUS, on behalf of themselves and ALL OTHER PERSONS SIMILARLY SITUATED,

Respondents.

RESPONDENTS' BRIEF

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POLICE PENSION AND RELIEF BOARD, et al.,
Petitioners,

vs.

CHARLES BEHNKE, et al., etc.,
Respondents.

RESPONDENTS' BRIEF

Succinctly stated, this case submits the cause of a subdivision of the State of Colorado, i.e., a municipal corporation, and its officers who complain that they are deprived of property without due process of law by reason of an unfavorable interpretation placed by the Supreme Court of Colorado upon a provision of the Charter framed and adopted by petitioner City and County of Denver, itself.

Equally succinctly, that complaint can find no hearing in the United States Supreme Court for three reasons.

1. Petitioners have no standing to invoke the guaranties of the Fourteenth Amendment.

2. No Federal question is here involved.

3. Petitioners have not been denied "due process of law."

ARGUMENT

no standing

The protection of the due process clause of the Constitution of the United States does not embrace a state, state agency, or municipal corporation to protect it from an unfavorable or an erroneous interpretation by the local Courts of a statute, law, or ordinance which it has enacted and which it may at its pleasure repeal or modify. The due process clause of the Fourteenth Amendment by its very terms is limited to protect persons, natural or artificial from oppressive state action, but not to immunize the local government from the enforcement of its own statutes, laws, or ordinances. The clause prevents a state and its subdivisions from making or enforcing laws or engaging in conduct which would arbitrarily deprive any person of life, liberty or property. But the state and its agencies may not invoke the Fourteenth Amendment although they may be bound by the interpretation placed upon their own legislation by local Courts.

Sweeney vs. State (1929) 251 N.Y. 417; 167 N.E. 519, 520.

The mere interest of a public officer, as such, in contrast to an actual injury sustained by a natural person or a corporation through an invasion of personal or property rights, has never been deemed adequate to enable him to invoke the protection of the Fourteenth Amendment either against state action or with reference to an unfavorable interpretation of state or local law.

Columbus and G.R. Company vs. Miller (1931) 283 U.S. 96; 51 S.Ct. 392; 75 L.Ed. 861.
Pennie vs. Ries (1889) 132 U.S. 464; 33 L. Ed. 426; 10 S.Ct. 149.
Taylor vs. Beckham (1900) 178 U.S. 548; 44 L.Ed. 1187; 20 S.Ct. 890.
Tyler vs. Judges of Court of Registration 179 U.S. 405, 410; 45 L.Ed. 252; 21 S.Ct. 206.
Straus vs. Foxworth (1913) 231 U.S. 162; 58 L.Ed. 168; 34 S.Ct. 42.

Similarly municipal corporations have no standing to invoke the provisions of the Fourteenth Amendment in opposition to the will of their creator, the state, or its duly constituted courts.

Pawhuska vs. Pawhuska Oil Company (1919) 250 U.S. 394; 63 L.Ed. 1054; 39 S.Ct. 526.
Trenton vs. New Jersey (1923) 262 U.S. 182, 188; 67 L.Ed. 937; 43 S.Ct. 534.
Williams vs. Baltimore (1933) 289 U.S. 36; 77 L.Ed. 1015; 53 S.Ct. 431.

no federal question

The Constitution of the United States does not guarantee that the decisions of state courts shall be free from error, nor does the due process clause give the Supreme Court jurisdiction to review mere mistakes of law concerning local matters alleged to have been committed by a state court.

MacDonald vs. Oregon Railroad and Navigation Company (1914) 233 U.S. 665, 667; 58 L.Ed. 1145; 34 S.Ct. 772.

The decision of a state court upon a question of local law, however wrong, is not an infraction of the Fourteenth Amendment merely because it is wrong. It is not for the United States Supreme Court to determine whether there has been an erroneous construction of a state statute, nor does the Federal Constitution impose any impediment to the correction or modification by a state court of previous constructions of law embraced in earlier decisions.

> Patterson vs. Colorado ex rel Attorney General (1907) 205 U.S. 454 461; 51 L.Ed. 879; 27 S.Ct. 556.
> Standard Oil Company vs. Missouri ex rel Hadley (1912) 224 U.S. 270, 287; 56 L.Ed. 760; 32 S.Ct. 406.
> Stockholders vs. Sterling (1937) 300 U.S. 177, 182; 81 L.Ed. 586; 57 S.Ct. 386.

If the local law offends the state authority which enacted it, the obvious remedy is to pluck it out by repealing or amending it. Thus the objection would be obviated and Federal intervention unnecessary.

due process

This case involves solely the interpretation of a Charter provision. It would appear obvious that the Court in making such interpretation could consider any source for its reasoning that seemed desirable. In reviewing related ordinances the Court was no more considering "evidence not in the record" (p. 17 Opening Brief) than if it had consulted the dictionary.

Nor, as a reading of Appendix B reveals, was the overruling of the previous decision of the Court necessary to the present decision. The Court after stating plaintiffs' rights under the earlier ordinances, considers the later Charter Amendment, then concludes, "We find nothing in this amendment that purports to deprive plaintiffs of any rights previously granted." (p. 47, Opening Brief) The decision could have terminated upon this announcement as far as the rights of the respective litigants in the instant case are concerned.

The Court, however as it was free to do, chose to go further and reverse the earlier case. Neither the lower court s decision nor its affirmation in the Supreme Court of Colorado hinged upon such overruling, and necessarily there was no divesting of "defenses and rights accrued, vested, and in existence prior to such reversal * * * " (p. 19, Opening Brief), and no denial of due process.

conclusion

Petitioners concede there was no Federal question of substance or otherwise, presented in the case by the pleadings or the trial upon stipulated facts (p. 7, Opening Brief) Their only quarrel is with the reasoning and language of the opinion of the Supreme Court of Colorado. These, it is submitted, are not within the purview of the Fourteenth Amendment, even if petitioners were themselves properly addressed to its guaranties. Those guaranties pertain to the substance, not to the reasoning, of judgments. The judgment and

order here are no more burdensome than the prayer of the Complaint and the judgment of the trial court to which no Federal grounds of objection exist.

Since the decision of both state courts could have been reached, and that of the trial court was concededly reached without the alleged violation of constitutional rights, such decisions are not subject to review by the Supreme Court of the United States.

Certiorari should be denied.

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February 1958.